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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,483	12/05/2003	Timothy L. Mason	MASON - 15	2106
25889	7590	09/12/2005	EXAMINER	
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			NEWTON, JARED W	
		ART UNIT	PAPER NUMBER	
			3634	

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/728,483	MASON, TIMOTHY L.
	Examiner Jared W. Newton	Art Unit 3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 December 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) 2 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 December 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>19 July 2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Oath/Declaration

1. An updated Declaration for Patent Applications and Power of Attorney is required. The current form does not contain up-to-date information regarding co-pending patent applications 29/174,678, 29/176,492, and 29/177,331.

Specification

2. The disclosure is objected to because of the following informalities:

- It is requested that paragraphs or lines be numbered
- The word "know" on line 9 of page 2 of the disclosure should be changed to --known--.

Appropriate correction is required.

Claim Objections

3. Claim 2 is objected to because of the following informalities:

- Part (c) recites, "said at least one wheel comprises two wheels..." This language is indefinite. It is suggested that the claim read, --Said base comprises two wheels...--

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 5, 7, 8, and 10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims contain the recitation, "at least three modular merchandise units." Neither the specification nor the claims establishes a nominal size of said merchandise units. It follows that any shelf is of sufficient depth to retain at least three modular merchandise units as long as said units are of sufficiently small size to be accommodated in the shelf.

6. Claims 6 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claimed subject matter regarding the shape and function of the horizontal and curved shelf opening portions is not detailed in the claims and drawings to the extent that one of ordinary skill in the art would be able to make or use said portions. The subject matter should be eliminated from the claims, or described in complete detail so as to overcome the deficiency noted above. The applicant is reminded that no new subject matter should be added to the claims, drawings, or specification.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 3,006,707 to Rossi.

In regard to claim 1, Rossi shows at dispensing and display cabinet comprising: a base 16, a housing supported by said base comprising parallel first and second side walls 6,8 and a third side wall 4 connected to said first and second side walls; a cover 2 disposed on an upper portion of said first, second, and third side walls 6,8, and 4; at least one wheel 46 connected to said base; and at least one shelf 28 supported in said housing (see FIGs. 1 and 2).

In regard to claim 5, Rossi discloses said cabinet including all of the limitations of claim 1, further comprising at least five shelves 28 connected to said first, second, and side walls (see FIG. 2).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over '707 to Rossi in view of U.S. Patent No. 4,598,828 to Young et al., in further view of U.S. Patent No. 6,427,857 to Adams et al.

11. In regard to claim 2, Rossi discloses a display device including all of the limitations of claim 1, further comprising a base portion comprising parallel first and second base walls aligned with said first and second side walls, and parallel third and fourth base walls connected to said first and second base walls, said third base wall being aligned with said third side wall (see FIGs. 1 and 2, Rossi). Rossi does not disclose the guide openings and members, nor said third wall comprising wheel guide openings adjacent to wheel wells.

12. Young et al. disclose a dispensing rack 10 comprising a connection means to other similar dispensing racks in a side-by-side orientation. Said connections means comprises guide openings or apertures 22 and guide openings 24 (see FIG. 1, Young). It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the connection means as disclosed by Young et al. on the device as disclosed by Rossi. The motivation for said incorporation would be to provide said device with a means of locking in to other devices in a modular fashion, so as to provide a continuous row of said devices at a desired length, accommodating a desired amount of merchandise.

13. Adams et al. disclose a display apparatus 10 comprising a rear or third wall 44, the base of which comprises two wheels 60 and 61 protruding from wheel well openings, said base further comprising a wheel guide opening adjacent to said wheel wells for alignment of said display device with a third additional display device (see FIG. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the wheel well and wheel guide opening as disclosed by Adams et

al. with the device as disclosed by Rossi in view of Young et al. The motivation for said combination would be to allow the device as disclosed by Rossi in view of Young et al. to connect to multiple other similar devices as taught by Adams et al., in order to accommodate a desired amount of merchandise.

14. In regard to claim 3, the examiner takes official notice that it is well known in the art to use a cutout of a vertical surface as a handle. Structures such as corrugated cardboard boxes and stands, plastic containers, and storage bins all employ this means of lifting and moving said structures. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the structure as disclosed by Rossi with a cutout in its rear wall. The motivation would be to provide a simple means of lifting and moving said structure, without requiring additional handles, hardware, or fastening means.

15. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over '707 to Rossi in view of U.S. Patent No. 6,405,880 to Webb. Rossi discloses a device including all of the limitations of claim 1, but does not disclose slots disposed on said cover. Webb discloses slots defined by 58 and 76, which are adapted to receive advertising displays 60 (see FIG. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the advertising means as disclosed by Webb with the device as disclosed by Rossi. The motivation for said combination would be to allow for removable and replaceable advertisement of the product displayed in the device according to Rossi. Removable advertisement would be desirable when a product price

is lowered and the merchant wishes to display the new price instead of the previous price.

16. Claim 7 is further rejected under 35 U.S.C. 103(a) as being unpatentable over '707 to Rossi in view of U.S. Patent No. 5,706,953 to Polvere. Rossi discloses a device including all of the limitations of claim 1, but does not disclose flat shelf portions.

Polvere discloses a display device comprising flat shelf portions 79, 80, and 81 (see FIG. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the shelf portions as disclosed by Polvere with the device as disclosed by Rossi. The motivation would be to provide said device with a portion of each of its shelves in the horizontal plane so as to display merchandise in an upright orientation so that a consumer is able to easily view the front of said merchandise.

17. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over '707 to Rossi in view of U.S. Patent No. 4,562,927 to Fredrickson, in further view of U.S. Patent No. 3,377,771 to Schmidt.

18. Rossi discloses a structure including all of the limitations of claim 1. Rossi does not disclose a defined channel or an angled ramp according to the claim limitations.

19. Fredrickson discloses a display rack comprising a shelf comprising a pair of spaced apart side walls, and at least one support disposed in said channel for receiving the base of a merchandise unit (see FIG. 1, Fredrickson).

20. Schmidt discloses a system for dispensing cans comprising a gravity-feed-shelf with an angled upper portion 47, a horizontal lower portion 205, and a middle portion 97 that slopes at an angle greater than the angle of said upper portion (see FIG. 1,

Schmidt). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the structure as disclosed by Rossi with the ramp as disclosed by Frederickson, and the ramp angles according to Schmidt. The motivation for said combination would be to provide the display structure as disclosed by Rossi with a means for feeding the merchandise to the front of its shelves via gravitational force. This is beneficial in cases when said structure is to be rear-loaded, or front-loaded in a pushback fashion, keeping the front of said shelf full at all times.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jared W. Newton whose telephone number is (571) 272-2952. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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